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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,865	03/16/2001	Stephen J. Brown	HERO-1-1112 / 014030.0123	6556
60683	7590	09/08/2006	EXAMINER PHAN, THAI Q	
HEALTH HERO NETWORK, INC. 2000 SEAPORT BLVD. SUITE 400 REDWOOD CITY, CA 94063			ART UNIT 2128	PAPER NUMBER

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,865

Applicant(s)

BROWN, STEPHEN J.

Examiner

Thai Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-39, 51-54, 62, 67 and 68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-39, 51-54, 62, 67 and 68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>Sept. 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to applicant's amendment filed on 06/12/2006.

Claims 37-39, 51-54, 62, and 67-68.

Information Disclosure Statement

The Information Disclosure Statement filed on Sept. 20, 2005 was being considered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 37 recites the limitation "said disease control parameter values" in step (c).

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 37-39, 51-54, 62, and 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehr, Bruce, US patent no. 5,642,731 in view of Kehr et al, US patent no. 6,102,855.

As per claim 37, Kehr discloses a microprocessor-based system for monitoring and recording outputs of clinical information data of a patient under a health care system with feature limitations very similar to the claimed invention. According to Kehr, the system includes

An electronic data recording device configured for receiving a prior disease control parameter value (col. 3, line 16 to col. 4, line 47, for exemplary),

A memory for storing control parameters and its values (col. 6, lines 3-24, lines 55-64, col. 7, lines 2-60, for example),

A microprocessor in communication with the electronic recording device and memory for calculating a further value, which is based on control parameter values, disease care, and scaling factor,

A display means for displaying information according to the calculated values for the disease for the appropriate action to control the disease (Figs. 28-30, cols. 9-23).

Kehr does not expressly disclose a blood glucose value in the device for controlling patient care. Such feature is however well-known in the art. In fact, Kehr, patent no. 6,102,855, teaches a method and system for monitoring and caring patients with patient health status information related to blood glucose and the control of the blood glucose (col. 3, lines 15-39, col. 9, lines 25-42, col. 11, lines 21-39) in order to monitor, treat and manage patient health conditions (Summary of the Invention).

This would motivate practitioner in the art at the time of the invention was made to combine informations related to patient health conditions such as blood glucose levels as taught in the patent 6,102,855 into Kehr health care monitor and control

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system to provide user with easy access for efficient and improved monitoring, treatment, and management of the patient health care conditions as taught in patent no. 6,102,855

As per claims 38-39, Kehr (6,102,855) discloses a housing for assembling the apparatus above to a single unit as shown in Figs. 2-3.

As per claims 51-54 and 62, 67, and 68, Kehr discloses the claimed invention for monitoring and controlling disease according to health care information and patient input data under control.

Response to Arguments

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 571-272-3783. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sept. 05, 2006


Thai Phan
Patent Examiner